82-1520

No._____

IN SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

GERALD J. LANDSBERGER, PETITIONER	PETITION FOR WRIT OF CERTIORARI
vs.	
COMMISSIONER OF REVENUE, STATE OF MINNESOTA RESPONDENT	

TO: THE SUPREME COURT OF THE UNITED STATES

The appellant above-named hereby petitions the Supreme Court of the United States of America for a Writ of Certiorari to review a decision of the Minnesota State Supreme Court filed on November 10, 1982, upon the grounds that said decision is not in conformity with the tax laws of the State of Minnesota and is unwarranted by the evidence.

Dated this 4th day of February, 1983.

Gerald J. Landsberger

Gerald J. Landsberger
Attorney Pro Se for Petitioner
4502 East Cortez St.
Phoenix, Arizona 85028

QUESTIONS PRESENTED FOR REVIEW

1. Whether Advisors Fees for Investing in Assets/Property are a deductible personal expense for the preservation, conservation and maintenance of the personal estate of Mr. Landsberger.
2. Whether the Personal Services Contract between Mr. Landsberger and Professional & Technical Services is a valid contract that meets the standard requirements of a contract, i.e., offer, acceptance, and consideration.
3. Whether the Personal Services Contract resulted in the sale/exchange of Mr. Landsberger's personal services property to a third party and thus transferred legal and tax liability to that third party, namely, Professional & Technical Services.
4. Whether Mr. Landsberger after making the transfer and completing his obligations under the PSC had any further legal/tax liability for the future earnings generated after May 27, 1979.

LIST OF PARTIES TO THE PROCEEDING

For the Petitioner,

Gerald J. Landsberger, Pro se

4502 East Cortez St.

Phoenix, Arizona 85028

For the Respondent, (State of Minnesota)

Paul R. Kempainen, Spec. Asst. Atty. Gen.

Centennial Office Building

St. Paul, Minnesota 55155

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GROUNDS FOR INVOKING THE SUPREME COURT-ALSO STATUTORY AND CONSTITUTIONAL PROVISIONS

The Minnesota Tax Court on June 11, 1982 ruled unfavorably on the Petitioners Appeal from the Commissioner's order dated May 22, 1981, relating to the State Income Tax of Appellants for the year 1979. The matter was subsequently appealed to the Minnesota Supreme Court who affirmed the decision of the Minnesota Tax Court en banc without oral argument, dated November 10, 1982, filed same date. The petitioner is now appealing to the Supreme Court of the United States under Statutory Provision U.S.C. Title 28, Section 1257. The Petitioner is opposing the States ruling because it is based on false information and on CONSTITUTIONAL grounds that the State is ignoring Article 1, Sec. 10, para. 1 which reads: "No State shall enter into any Treaty...pass any Bill of Attainder, expost facto Law, or Law imparing the Obligation of Contracts...".

STATEMENT OF THE CASE

The two actions of Mr. Landsberger which the State of Minnesota Revenue Department (SMRD) has disallowed and which are rebutted by Mr. Landsberger are as follows:

1. A deduction of $490.00 in Advisors fees for investing in property/assets regarding the preservation, conservation and mainteance of the personal estate of Mr. Landsberger.

2. A reduction of $15,000.00 (approx.) from the amount shown on the W-2 issued by Burlington Northern Inc., the sub-contractor employer-user of the personal services rendered by Mr. Landsberger via Professional & Technical Services, (a labor contractor much like Manpower Inc.) during 1979.

SMRD appears to claim that the $490.00 expenditure is not a deductible expense under Minnesota State Laws, Sec. 290. But the law does not exclude advisors fees.

SMRD also appears to claim that the

$15,000.00 reduction is not allowable due to their claim that the Personal Services Contract (PSC) between Mr. Landsberger and P&TS is an outlawed procedure described as an "anticipatory assignment of income". SMRD offered no proof to show that any income was given away.

Mr. Landsberger claims that the $490.00 expenditure is a well recognized type of expense for the purpose of preserving, conserving and maintaining the value of his personal estate for the benefit of his heirs.

Mr. Landsberger also claims that since he signed a valid contract in May, 1979, to divest all legal rights and control over his personal services property via a Personal Services Contract with Professional & Technical Services, a third party totally unrelated to Mr. Landsberger, that Mr. Landsberger no longer thereafter is the legal owner of said asset and he cannot be held liable for any future earnings generated by that asset.

A hearing was held on May 26, 1981 in the offices of the SMRD for the purpose of discussing the issues and the supporting laws, facts, documents and arguments on these two issues. SMRD was represented by Mr. Caulfield, Director, Department of Revenue, Mr. Paul Kempainen, Special Assistant, Attorney General and two other tax officials of the SMRD. Mr. Landsberger represented himself, and Mr. Frank Forrester, Trustee for P&TS appeared as a witness to clarify matters relating to the operation of the Personal Services contract. The entire hearing was audio taped and a tape is available for review of the total discussion (subsequently transcribed in writing).

As confirmed by the audio tape, the controlling contract is the Personal Services Contract between Mr. Landsberger and Professional & Technical Services and not any contract between P&TS and Burlington Northern. The tape near the end also states the position of the SMRD that the sole remaining issue is

the validity of the Personal Services Contract. In effect, the SMRD claimed the Personal Services Contract was invalid and Mr. Landsberger and Professional & Technical Services claimed it is valid. (See Note 1)

Mr. Landsberger filed a petition in the Minnesota Tax Court in order to rebut the disallowance of the SMRD. A hearing was held de novo in the Tax Court on February 16, 1982. The Tax Court allowed both sides to file briefs and allowed Mr. Forrester in his capacity as Trustee of Professional & Technical Services to file an amicus curiea brief.

Note 1

Validity of any contract, including this one, is evicenced by the fact that there was an arm's length offer by Professional & Technical Services, and an acceptance by Mr. Landsberger, and multiple considerations of $1.00 outright plus some 27 other additional benefits, plus the fact that there was a meeting of the minds, no complaint by either party to the contract, and no evidence that the contract was in violation of public policy or interest. The contract has been in full force and effect for over 3 1/2 years. Valid contracts cannot be abrogated by any governmental agency including SMRD. Courts are required to uphold contracts.

LAW AND ARGUMENT

The criteria for deductions allowed by state laws generally follow the same criteria established for federal tax deductions. IRS Code Sec. 212 sets forth the allowable personal expense deductions as being for the preservation, conservation and maintenance of property for the purpose of possible producing income or profit. The three requirments to be met are (1) the expense must be paid in the tax year (2) the expense must be ordinary and necessary (3) the expense must be for the purpose of producing potential income or profit.

Mr. Landsberger has met all three of these requirements. Mr. Landsberger has a cancelled check during the 1979 tax year showing payment of advisors fees for investing in assets/property. The expense of $490.00 was a very nominal and inexpensive fee and was required to be paid in advance for the services subsequently required by International Dynamics Inc. The expense re-

sulted in major savings which is a form of income known as "opportunity not lost". The effect of this minor expense was to shore up, preserve and maintain the value and to increase the potential of further savings and gains to my personal estate, which then included cars, real estate, insurance policies, bank accounts, business practice and investments. Tax consequences are also a critical consulting service rendered. Additional authorities include the following: 162 IRS Code, CCH, Tax Reporter, Vol. 2, para. 2000, 2004, 2005 (g) and (h), 2006: Master Tax Guide, National Business Affairs, Research Inst. of America, Prestice-Hall, Taxation for Accountants.

Mr. Landsberger and Professional & Technical Services (P&TS) mutually signed a Personal Services Contract (PSC) in May, 1979 which was offered and accepted by the two parties. The two parties had a meeting of the minds which has lasted without interuption ever since.

Both parties are totally pleased with the purpose and intent of the PSC. Neither the IRS or the State of Minnesota Revenue Department (SMRD) are parties to this contract. The contract is protected under the Contract Clause of the U.S. Constitution, namely, Article 1, Sec. 10, para. 1 and under Amendment 14, Clause 1. This contract cannot be abrogated by any governmental agency such as the SMRD or the IRS.

Extensive and multiple considerations exist on both sides; all obligations required by the contract have been met for the last four (4) years and no complaint has been raised by either party.

Mr. Landsberger has taken advantage of several monetary and non-monetary considerations included initially and added to in superseding updates to the PSC. The opportunity to reap additional benefits remains fully open to him.

P&TS is a service organization, what is known in the trade as a "body shop". As such

P&TS seeks to provide as many benefits to its independent contractor employees as possible. As the prime contractor, P&TS oversees the needs and desires of its employees on and off the job. P&TS has thousands of employees and operates in almost all states of the Union. No complaint has ever been filed in P&TS employer capacity.

The purpose and intent of the PSC is to allow employees to graduate to becoming "1st Class Citizen" independent contractors to achieve the same working benefits of other unrestricted independent contractors such as lawyers, doctors, dentists, consultants, busness men, shop owners, etc. In order to achieve this enviable status and escape the confines of laboring as employees for other people, individuals like Mr. Landsberger are able to move up to independent contractor status via the PSC. Independent contractors earn more money, save more money, avoid personal slights like time clocks, and have the kind of status that others look up to.

The intangible benefit of self-respect alone is worth the change, and the change is accomplished by accepting the considerations of the PSC. I accepted and benefited.

It is important to see and understand that the PSC does not state in writing, vervally or impliedly that signing the PSC involves at any time for even a fraction of a second any anticipatory "assignment of income." In the first place, it is legally impossible to give away what is not yours to give away. Since Mr. Landsberger had previously sold/exchanged his personal serices property, i.e., the earning asset, he no longer had a legal right and dominion to give away any future earnings of that asset. The word "assignment" in tax parlance means only to "give", it does not mean to sell or exchange. Selling and exchanging are tax-free, but giving involves incurring a tax liability on the act of giving after having paid the income tax on the receipt of payment of income. The PSC has absolutely

nothing to do with the totally unfounded and and frivolous claim of the SMRD that it involves an anticipatory assignment of income. No proof or evidence to the contrary has been presented or exists. The position of the SMRD falls totally on this issue alone.

The thrust of the discussion had in trial centered around the question of what constituted "constructive receipt" and what constituted an "assignment of income."

First, we will discuss "constructive receipt." The doctrine of constructive receipt treats as taxable income which unqualifiedly is subject to the demand of a taxpayer using the cash receipts and disbursements method of accounting, whether or not such income actually has been received in cash. According to the Commissioner of IRS, there is no constructive receipt unless the income is credited without restriction, and made available to the taxpayer, to the extent that it may be drawn upon and

brought immediately within his control and disposition. There must be no substantial limitations or conditions on this right. See CCH, Standard Federal Tax Reports s2834, Constructive Receipt of Income. See also Internal Revenue Regulation 1.451-2, Minn. Sta. s290.07, Minn. Income Tax Reg. 2007(6)-2 and Internal Revenue Code s451 (26 USC s451).

In the present case, unrebutted testimony offered by Mr. Landsberger through his witness Mr. Frank Forrester, clearly showed that the funds in question belonged to P&TS. The testimony showed that Mr. Landsberger was not entitled to receive those funds in any way. Indeed, Mr. Forrester testified that if the funds were not forwarded as required, Mr. Landsberger can and would be sued by P&TS for breaching the contract. Mr. Forrester referred to it as "Grand Larceny."

This idea of constructive receipt is not new to tax law. The courts have long held that where monies are not unconditionally

paid to or received by the taxpayer, there is no liability for income taxes on said money. See R.V. Board v Commissioner, 14 BTA 374, Dec. 4612 and R.V. Board v. Commissioner, 18 BTA 650, Dec. 5727 (Acq..) Accord: Huber v. Commissioner, 12BTA 1, Dec. 3972 (Acq.) and William B. Bratt EState, 7 BTA 621, Dec. 2604 (Acq.).

See also Arwine v. Commissioner, 76 TC 532 (1981), where the Tax Court pointed out that under the constructive receipt doctrine, the issue is whether proceeds not actually possessed by a taxpayer are nonetheless available to him in such a manner that this control over them is not subject to any substantial limitations or restrictions. Mertens Law of Federal Income Taxation, (1981), s10.07. In his testimony, Mr. Forrester plainly established that Mr. Landsberger has no control over the money in question after he has signed the Personal Services Contract. For this reason, the income is not Mr. Landsberger's but rightfully belongs to P&TS.

Since Mr. Landsberger did not "constructively receive" the income, Mr. Landsberger is not liable for any tax thereon. Any tax liability would rest with P&TS.

The second issue of major proportion in this case is whether the personal services contract constitutes an "anticipatory assignment of income" and thus, is of no effect for income tax purposes. It is universally accepted that one cannot avoid one's tax liability by attributing his income to another through an anticipatory assignment, however skillfully or cleverly devised. In the present case of Mr. Landsberger v. Commissioner, we are not involved with an assignment. The personal services contract constitutes an arm's length transfer of property for good and sufficient consideration. This is not an assignment as contemplated by Lucas v. Earl, 281 U.S. 111 (1930). Black's Law Dictionery defines "assignment" as follows:

"A transfer or making over to another

> of whole of any property, real or personal, in possession or in action, or any estate or right therein." Citing Bostrom v. Bostrom, 60 N.D. 792, 236 N.W. 732, 734.

In the present case, we are dealing with the sale of personal services property in an arm's length transaction by Mr. Landsberger to Professional & Technical Services through the Personal Services Contract. Under the terms of the contract, Professional & Technical Services purchases from Mr. Landsberger all right, title and interest in and to Mr. Landsberger's personal services. In exchange, P&TS provides various considerations including estate planning services and a very large line of credit. The twenty-seven specific considerations which are provided are listed in paragraph two, Economic Justifications, in the Entrusted Personal Services Contract itself which is in evidence at the Minnesota Tax Court. Furthermore, Mr. Forrester explained in great detail all of the benefits one was entitled to after signing a personal services contract.

As was stated by Justice Field in the early case of Buchers Union Company v Crescent City Company, 111 U.S. 764 (1883), quoting from Adam Smith in the Wealth of Nations:

> "The property which every man has is his own labor, as it is the original foundation of all other property, so it is most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property."

The Supreme Court has long recognized the proposition that personal services are in fact personal property and one has the same constitutional rights to that property as any other property. This includes the right to sell those personal services if one should choose to do so. This is exactly what happened in the present case. Mr. Landsberger has become a party to the personal services contract and has sold his personal services property to P&TS in exchange for the considerations described in the contract. The fact that tax benefits

may be derived from this contractural arrangement can be of no moment.

In Edwards v. Commissioner, 415 F.2d 578, 582 (10th Cir. 1969), the court held:

> "The dignity of a contract cannot be set aside because a tax benefit results either by design or accident."

In the case of United States v. Butler, 297 U.S. 615 (1936), the Court stated as follows:

> "The judicial branch has only one duty: To lay the Articles of the Constitution beside the statute which is challenged, and to decide whether the latter squares with the former, The only power the court has is the power of judgement."

In a conference with Mr. Landsberger and Mr. Forrester, the SMRD admitted that the personal services contract and its provisions was the controlling instrument when attempting to determine tax liability. The transcript of said conference is on record at SMRD. Since the contract is legally binding in that it contains an offer, an acceptance and consideration paid, the government has

no legal right to set it aside. Any attempt to do so is flatly unconstitutional and should not have been contenanced by the Tax Court.

SMRD attempts to draw parallels between the within system and the Family Trust program which has been ruled by the United States Tax Court to be without effect for tax purposes. The Court has ruled that the so-called family trust is a grantor trust under Internal Revenue laws. Courts have ruled that the transfer of income involved with said trust is ineffective for income tax purposes. Even viewing the herein arrangement in a light most favorable to the government, it cannot be said that the personal services contract arrangement even remotely resembles a family trust. There is no connection or similarity between the two whatsoever. In a family trust arrangement, a principal assigns his personal income (does not sell it) to a trust which he himself created and is often times the Trustee

and beneficiary. In the present case, the income is not "given" to Professional & Technical Services for P&TS is in the first instance the legal owner by contract. Mr. Landsberger did not create P&TS. Mr. Landsberger is not the trustee of, or beneficiary of, P&TS. Mr. Landsberger has no connection with P&TS, or any of the other entities involved. Once the contract is signed, Mr. Landsberger has no right, title or interest in or to his wages. Mr. Landsberger is not the legal owner of funds belonging to P&TS, therefore if he receives any funds belonging to P&TS, he must act as their Agent and turn over the funds to his Principal, P&TS.

It is axiomatic that to be relieved of tax liability, an individual must transfer not only the right to receive income, but also the property which produces that income. See Commerce Clearing House, Master Tax Guide paragraph 709.

The principle of law can best be described in this fashion: A citizen owns an apartment building from which income in the form of rent is received. Citizen A, through a contract with Citizen B, designates said Citizen B as the owner of all the rent receipts generated by the apartment building. For income tax purposes, this contract is of no effect to transfer the tax liability from Citizen A to Citizen B. This is due to the fact that Citizen A is still the legal owner of the apartment building. As such, under the law, he is the legal owner of the "fruit" which is generated by said apartment building. Conversely, if the same Citizen A, in an arm's length fair market value transaction, sells the apartment building and all right, title, and interest in and to said apartment building to Citizen B, Citizen A has thereby divested himself of the tree from which the fruit emanates and has extinguished any tax liability on the income earned by the apartment building.

The liability now lies solely and exclusively with Citizen B.

The present situation, the same arrangeas the latter example is affected in this case with Mr. Landsberger selling the tree (his personal services property) to Professional and Technical Services. The fruit which emanates from said tree (wages) are properly attributable to the one who owns the tree from which the fruit emanated. P&TS therefore, is liable for the tax on said wages.

In sum, because Mr. Landsberger has sold his personal services property to P&TS, P&TS becomes the legal owner of the property and concomitantly, P&TS becomes the owner of the fruit which emanates from said property. Similarily, P&TS is the party responsible for the income tax on said property, not Mr. Landsberger.

In the Supreme Court case of Adkins v. Children's Hospital, 261 U.S. 525 Justice

Sutherland reflected:

> "In principle, there can be no difference between the case of selling labor and the case of selling goods."

CONCLUSION

It is inescapable that the SMRD has no factual, legal or logical basis for any disallowance of either the $490.00 advisors fee for investing in Assets/Property or for the $15,000.00 (approx.) belonging to Professional & Technical Services. Consequently, there is no basis for not accepting Mr. Landsberger's properly, accurately filed Minnesota State Tax returns.

- Mr. Landsberger has properly supported all of his deductions with contracts, confirmations, cancelled checks, and Personal Service Contract copies.
- Professional & Technical Services is the sole legal owner of the personal services property and thus is the sole legal/taxable owner of the earnings from that property.

. The Personal Services Contract is valid in both form and substance and was carried out over many years to the letter. Neither side filed any complaint of breach of contract.

. There is no evidence of any anticipatory assignment of income. The Personal Services Contract is the reverse of the case presented to the U. S. Supreme Court in Lucas v. Earl, 1930, 281 U.S. 113-115. The precedent stated then applies today in favor of Mr. Landsberger and Professional & Technical Services, i.e., whoever owns the "tree" owns the "fruit". The legal owner is the one who is taxed.

The undersigned petitions the Supreme Court of the United States to set aside the ruling of the Minnesota State Tax Court and Minnesota Supreme Court as being in error.

Dated this 4th day of February, 1983.

Gerald J. Landsberger

Attorney Pro Se for Appellant

82-1520

IN SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

GERALD J. LANDSBERGER PETITIONER vs. COMMISSIONER OF REVENUE, STATE OF MINNESOTA RESPONDENT	PETITION FOR WRIT OF CERTIORARI

APPENDIX

EXHIBITS

Gerald J. Landsberger Relator, 82-842 vs. Commissioner of Revenue, Respondent.	(Note: Ruling was made prior to receeipt of Frank Forrester's affidavit.)

Considered and decided by the court en banc without oral argument.

ORDER

Based upon all the files, records, and proceedings herein, IT IS HEREBY ORDERED that the decision of the Minnesota Tax Court, filed June 11, 1982, be, and the same is, affirmed pursuant to Rule 136.01(2), Rules of Civil Appellant Procedure.

Dated: November 10, 1982

BY THE COURT:

(Original Signed) M. Jeanne Coyne
Associate Justice

In the Matter of the Appeal from the Commissioner's Order dated May 22, 1981, relating to the Income Tax of Appellants for the year 1979, Gerald and Betty Landsberger.

Order dated June 11, 1982 - - - DOCKET 3354

The above entitled matter was heard by the Minnesota Tax Court on February 16, 1982, Judge Carl A. Jensen presiding.

Gerald Landsberger, one of the Appellants appeared on behalf of the Appellants.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of the Appellee.

Frank Forrester was allowed to file a Brief amicus curuae. In a Brief he stated the following: "It is very important to recognize that Frank Forrester was/is the sole expert to testify re the organization, the purpose, the parties, the authority to act re IDI (International Dynamics, INc.), IDI Credit Union, Equity Credit Foundation P&TS (Professional and Technical Services),

American Dynamics Corp., and Financial Counselors, Inc."

SYLLABUS

1. A so-called lifetime sale of "personal services property" between Landsberger, the Appellant herein, and P&TS, which was stated to be a trust of some kind, does not affect the taxability of income that Appellant received from his employer, Burlington Northern Railway. The employer is required to withhold income taxes, pay Social Security Taxes, carry Workers Compensation, and do any other things required of any employer.

2. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions whan are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minn. Stat. 290.53.

3. A person advising or assisting in the fraudulent attempt to evade taxes may be guilty of a crime under Minn. Stat. 609.05

FINDINGS OF FACT

1. The Appellants, Gerald and Betty Landsberger, are cash basis, calendar year taxpayers and residents of the State of Minnesota. The taxable year at issue herein is 1979.

2. During the year 1979, Appellant Gerald Landsberger (hereinafter referred to as Landsberger) was employed in the Accounting Department of the Burlongton Northern Railroad. Landsberger's employment with Burlington Northern began in 1952 and continued until his resignation in 1981. By reason of this employment, Landsberger was paid by Burlington Northern a total of $25,027.72 in compensation during the taxable year 1979 as shown by his W-2 Form.

3. On May 27, 1979, Landsberger signed a document titled "Personal Services Contract" with Professional and Technical Services (a Trust) which was also signed by F. Forrester. On June 1, 1979, Landsberger signed a

document titled "Intrusted Personal Services Contract" which was signed by Frank Forrester, trustee for Professional and Technical Services. The first contract indicates that it is an assignment of personal services to run continuously until cancelled in writing. Further language appears to indicate that the contract renews automatically for one year unless either party gives fifteen days notice in advance of the annual renewal date. Further language indicates that either party can terminate the contract by giving written notice thirty days in advance of the requested termination date. There appears to be some conflict in these provisions.

The second contract appears to indicate that it runs "indefinitely." Nothing furis said about terminating but Frank Forrester stated in his rebuttal to Appellee's brief as amicus curiae on Page 3 that it was " an actual legal, valid, irrevocable contract in full force and effect."

4. Burlington Northern, Landsberger's employer, had no knowledge of the contracts referred to above during the period involved herein.

5. Landsberger endorsed over to IDI $15,236 of his paychecks from Burlington Northern. Burlington Northern withheld state and federal income taxes and Social Security taxes, and Landsberger received and was entitled to all the benefits of other employees of Burlington Northern.

6. Landsberger received $14,475 in payments from IDI Credit Union. This was 95% of the amount he signed over to IDI. It appeared that as soon as he turned over a check to IDI he received in return a check for 95% of the check turned over. Landsberger and Forrester characterized the payments from IDI Credit Union as gifts from a charity. Similar contracts were signed by Forrester with other employees and Landsberger participated in soliciting and signing some of the contracts. Landsberger

also handled some of the receipts and made some of the payments from the IDI Credit Union. It appeared that the payments to other employees amounted to 80 to 100 percent of the amounts of the paychecks that they turned over. The checks were mailed to a Post Office Lock Box in the St. Paul Post Office from the other employees and Landsberger then deposited these checks in the St. Paul bank account over which he had signature authority and made the payments by check signed by him to the other employees.

7. Landsberger filed his 1979 Minnesota Tax Return indicating the amount he had received from his employer, Burlington Northern, and he took a deduction of $15,236, which he called "factors discount on accounts receivable-resold," which was the amount of paychecks signed over to IDI.

8. Landsberger also took a deduction on his 1979 Tax Return of $445 which he called

"advisors fees for advice on investing assets/property."

9. The Appellants' 1979 Minnesota Income Tax claimed that no Minnesota Income Tax was due from Appellants and that they were entitled to a refund of $753.

10. Appellants also claimed and received a property tax refund for 1979 in the amount of $247 based on the net income shown on their tax return.

11. Upon audit by the Commissioner of Revenue, the factors discount deduction of $15,236 and the deduction of $445. for advisors fees were disallowed. The property tax refund was recomputed and as a result of these changes the following additional tax plus interest was assessed against Appellants for 1979:

Additional Income Tax	$671
Property Tax Refund Disallowed	247
Total	$918.

12. The Commissioner issued his order

of Assessment on May 22, 1981. The Appellants have taken a timely appeal from that Order to this Court.

13. Landsberger was an employee of Burlington Northern Railroad and was required to pay income taxes on the wages received from Burlington Northern Railway. Any transactions that he had with IDI or P&TS had no effect on the taxability of his income from Burlington Northern Railway.

14. There is no basis for the factors discount deduction of $15,236.

15. The deduction of $445 for advisors fees was properly disallowed as there was no showing that it was made in connection with the management, conservation or maintenance of any of his property which produces or is intended to produce taxable income to him.

16. A claim of excess withholding exemptions or deductions resulting in tax reduction or exemption may be tantamount to fraud and will ful evasion of taxes subject to criminal penalties under Minn. Stat.

17. A person advising or assisting in the fraudulent attempt to evade taxes may be guilty of a criminal act under Minn. Stat. 609.05.

CONCLUSIONS OF LAW

1. The Commissioner's Order of Assessment dated May 22, 1981, is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,

(Original signed by) Carl A. Jensen,
Judge
Minnesota Tax Ct.

Docket # 82-842

AFFIDAVIT OF FRANK FORRESTER 11/6/82

This Affidavit is being furnished in lieu of personal testimony and appearance by Frank Forrester as the sole existing expert witness re the operation of the Personal Services Contract. This information is designed to defend Frank Forrester, Forrester's financial investment systems, Professional & Technical Services, a trust (Frank Forrester, Trustee), and the wilfully false, deliberate libel and slander, fraudulently manufactured, twisted and distorted, unsupported, and unfounded claims/ statements of the lower court in arriving at a totally prejudiced opinion against Gerald Landsberger. Public interest and judicial honor requires the undersigned (Frank Forrester) to point out each false statement made by the court below on the 11th of June 1982. Regardless of who says them, lies

never add up to a single truth.

To have arrived at its adverse claims and comments and to buttress them so as to give them the air of reality the mind of the lower court had to be involved as follows:

1. Prejudice and bias existed beforehand and any excuse was leaped upon as a basis to issue derrogatory comments about Landsberger, Forrester, and the systems--even though Forrester took pains to prepare an explanatory flowchart during the recess.

2. No attention was paid to its oath of office to uphold and defend the Constitution and to be a servant of the people to protect the people from the tyranny of Government.

3. All key issues were ignored and con-concentration was on only irrelevant matters.

4. Several times false words and leading questions were used to attempt to dis-

tort testimony of Landsberger and to cut off Forrester's pertinent testimony.

5. Lacking any facts to support its prejudices, it substituted its own version of the facts and made its interpretation based on same using words like "absurd" and "ridiculous."

6. It filled its opinion with dozens of spurious court cases, all relating to irrelevant matters of no comparison or consequence. This was done deliberately to "beef up" the lower court's opinion inasmuch as there are no prior cases on record of any similarity to the present case.

7. The lower court has illegally attempted to quote many passages from another case which (a) is still pending in the 8th Circuit Court of Appeals (b) was never heard on its merits (c) contains some 111 false statements of Judge Renner in the Federal District Court who blocked all due process and discovery and interrogatories of Landsberger in order to steam roller over Lands-

berger in a vicious display of judicial arrogance for the American system of law and order.

8. The lower court, in order to pretend to make a case, was forced to violate the "Contract Clause" of the U.S. Constitution by pretending that the Personal Services Contract did not exist as a viable contract in full force and effect.

9. The lower court changed the wording of the Personal Services Contract from being that of a SALE OF ASSETS to being a GIFT OF INCOME. This is the basic LIE that the lower court had to depend on in order to list all of its irrelevant conclusions, its irrelevant court case citations (all of which related to gifts of income, and none related to sale of assets), and its fatuous claims of wrongdoing by Landsberger and Forrester.

10. The lower court lied to bring Burlington Northern into the case since BN was not a party to any of the Personal Services Contracts and was not involved in any

other way with the issues at hand.

11. The lower court tried to duck the issues at hand by pretending that "constructive receipt" was not involved and by pretending that Landsberger was the legal owner of earnings generated AFTER Landsberger has legally sold the assets which generated those earnings.

12. The lower court twisted the decision in the U.S. Supreme Court case of Lucas vs Earl, 1930, to make it appear that Landshad given away income that he had legal control over and constructive receipt of; whereas, Landsberger never for a single instant ever had any further legal control once he had sold the earning assets. Landsberger merely had physical control, and he discharged his legal duties by turning over to Professional & Technical Services, a trust, what wasn't his to keep.

13. The Appellee in prior hearings had properly agreed that any contract between

P&TS and Burlington Northern was "NOT CONTROLLING," so that any reference to BN was moot. Yet, the lower court harped and harped on this meaningless, non-existent contract. What BN considered and did do or did't do is entirely immaterial and must be striken and ignored.

14. For these and the following reasons all the lower court's comments are nothing but frivolous nonsense designed solely to support the unlawful attempts of the Appellee to extract more taxes than the law allows. The lower court sought to plug what it considered to be a loophole in the law, but the lower court (FORTUNATELY) has no such law making power or authority.

15. The lower court ignored the sole basis of all of the systems invented by Frank Forrester, which is that they are all improvements in the investment of assets as the sole source of all the profits in the world, i.e., accounts receivable, a 100% legitimate enterprise in our FREE ENTERPRISE

AMERICA. Landsberger and Forrester are a part of the tax producers with their free enterprise systems while the lower court is a part of the tax consumers, which is why the lower court was so blatantly biased and so unjudicial like as to be appalling.

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The following numbers prior to affidavit statements refer to pages of the lower court's decision.

B(2) Lower Court (LC) lies to claim the Personal Services Contract (PSC) "does not affect the taxability of income that Appellant received..." Not only is it the key element which legally separates Landsberger from the income, but it permanently and legally removes Landsberger from any taxability on the income legally owned by Professional & Technical Services. Attempting to not recognize the legitimate PSC is a deliberate act by the LC to avoid the truth and to substitute the nonsense of the Appellee.

B(2) LC lies to characterize the legitimate "allowances" of Landsberger as "exemptions." As Landsberger owned no legal income, he had no legal tax liability, so he was exactly within his rights and according to the stated purpose and instructions on the IRS' W-4 form to file with enough allowances to cause the computer to not withhold any taxes on the income which BN had credited to Landsberger but for which Landsberger was not the legal owner. Altho the W-4 has no provision, i.e., no boxes or special instructions to handle the non-constructive receipt of money, the IRS agents have consistently said that the approach used by Landsberger was correct and that the advice given to Forrester to attach an explanation was the only way remaining for filing W-4's and 1040 tax returns. Appellee has failed/ refused to show any other method for filing for non-constructive receipt. In fact. Appellee and LC both pretend they have not heard of constructive receipt. Later, the

LC gives its view of what area is covered by constructive receipt but that area is not the area involved in this case. The LC merely showed its total ignorance of all areas of constructive receipt as covered fairly well by MERTENS.

B(2) The LC tries to scare the Appellant by making non-applicable references to "fraudulent attempt to evade taxes..." Not only is there no fraud and no attempt to evade taxes by Landsberger, but no taxes of any kind are due to Appellee. The LC is engaged in illegal threats and coercion under a voluntary system of taxation when nothing is owing or due.

B(3) The LC lies to claim Landsberger resigned. Landsberger retired after meeting all of the requirements for retirement of BN.

B(3) The LC tries to bring BN into the case, but lack of knowledge of BN only proves that BN was not a party to any contract and is

thus not in the picture.

B(5) The LC lies to refer to Landsberger's physical receipt of money as "his paychecks." The paychecks were not the legal property of Landsberger so it is fraud to refer to same as "his paychecks."

B(5) The LC tries to make something of nothing by referring to benefits Landsberger received from BN. As both employees and outside contractors receive pretty much the same benefits either direct from the employer or inderectly from the employer to the body shop to the independent contractor. This reference is just a smoke screen by the LC to attempt to smear the operation of the Personal Services Contract. The BN was not withholding monies for Social Security for the benefit of Landsberger, RR is involved. Premiums have to be paid by law by someone, so who pays is meaningless.

B(5) The LC lies to characterize the gifts given out by the IDI Credit Union as "pay-

ments." No payments of any kind were ever made by the charities to anyone. All monies issued were gifts always. The amount of the gifts, the date of the gifts, the parties to whom gifts were issued are all immaterial as the Appellee has no jurisdiction over the charities. No jurisdiction means exactly what it says, no control and no right to carp or criticise or to be mentioned by the LC. Since Landsberger had/ has no legal connection with the charities, there is no point to mentioning the gifts. On June 22, 1982 I spoke with Mr. Fiorells, Attorney in the NY State Banking Commission to ascertain the legal status of a person given temporary appointment to sign withdrawal checks on an account in which the signing party was not an officer, director, employer, or agent appointed under a power of attorney. Mr. Fiorello plainly stated that there is no law or regualtion covering the subject, that the signing party is limited to responsibility for signing just

those checks with his name on and only to that one bank account, that such party has no other legal connection with the appointing organization, and that the IRS agents and the LC should go back to school to learn their ABC's. (Phone 212-488-5629, NYC)

B(5) The LC made several false and unsuported and irrelevant assumptions re the gifts. It is false that "as soon as he turned over a check to IDI..." because no dates were specified. "He received in return..." is also false as no dates are shown. Also, money may be given away by the charities from any source to anyone in any amount at any time, and the Appellee has no jurisdiction over same. All gifts were given out from monies on hand previously, and there was no waiting for any bank clearances, so there was no connection between monies going into IDI and gifts coming out from the charities. Further, IDI had sole legal control over its monies and could do what it wanted with them. IDI never gave a penny

to Landsberger. Thus, since the Appellee has/had no jurisdiction over IDI, the Appellee also had no jurisdiction over what either IDI or the charities did with their money at their sole discretion. Anyone hoping to get any money from any of the charities had to make a request for same, and the charities then decided what monies they could give out.

B(6) Despite the slurred inference by the LC, there is nothing illegal in marketing the PSC. It is also not illegal to handle any of the bookkeeping chores for same; Landsberger was an auditor by trade so he was fully capable to handle minor bookkeeping which even my wife has learned to do. Further, anyone can issue the gift checks, so again there is not an iota of illegality in such procedures and the LC is only trying to sneer at such effort. Again, it is false for the LC to characterize gifts as payments since one normally considers a payment as a

discharge of an obligation; no such obligation exists here. This is merely one of shyster tricks used by the LC to prejudice the appeals court.

B(6) It is a GROSS LIE of the LC that Landsberger had any "signature authority" in the St. Paul (or elsewhere) bank account in which checks were deposited. Landsberger was/is not listed as a signatory. However, even if he had been, it would still make no difference as it is not illegal to have signatory provileges of a temporary appointment nature. A false connotation of illegality is what the LC is attempting, but their effort is fruitless.

B(6) The LC also commits fraud by attempting to infer that it is illegal for Landsberger or any of the other 150 bookkeeping parties to sign outgoing checks for the charities. Every big charity is required to have dozens of appointed "bookkeepers" to issue all of their gift checks. Again, this is a smoke screen and an intended

smear.

B(6) The IRS agents originally in NYC said that deductions on the 1040 should be listed as a factor's discount expense to explain the deductions. The factor's discount refers to the fact that the legal owner of the paychecks, P&TS, has factored its accounts receivable and has taken an expense reduction under IRS Code Sec. 165(a). The IRS advice was pased on to Landsberger, and he followed this IRS advice, but it doesn't refer to any fact or claim by Landsberger that the accounts receivable were his accounts receivable; they were not; they were solely P&TS' accounts receivable. The amounts listed by Landsberger were 100% correctly computed and set forth as $15,236.00.

B(6) The disallowance of the $445.00 for advisory fees was illegal. Fees may be deducted for the purpose of preserving, conserving, and maintaining the assets which Landsberger already owned. It was/is not

necessary for Landsberger to assign the fee expense to the investment of new assets only in the future. The LC knew this and falsely tried to harrass Landsberger by supporting the unlawful claims of the Appellee. All over the world fees are paid and deducted for legal, accounting, and financial management advice and done legally and are given proper credit for same on 1040 tax returns. The LC and Appellee are wrong in claiming the $445.00 fee was not reasonable and justifiable. Other clients by the thousands have paid fees up to $5,000 for such valuable advice. Most lawyers make their living giving out advice worth less than 5% of what Forrester and IDI have given out to Americans to protect their family estates from bureaucrats. What the LC really hates is that Forrester's systems permit the average American to live free and clear of the odious Probate Courts where lawyers and courts make up to 80% of their fees, which is a shamful disgrace to be eliminated where

ever possible.

B(8) The LC lies to refer to "his income;" the income is solely the legal ownership of P&TS. Because Appellee has no jurisdiction over P&TS, the Appellee and the LC are trying find another party to stick with their confiscatory taxes; this is the prejudice of the LC.

B(8) The LC lies to claim "There is no basis for the factors discount..." The basis is very simple and clear--P&TS is the owner not Landsberger, and P&TS can factor any and all of its accounts receivable any day of the week and neither the Appellee nor the LC have any law, regulation, or jurisdiction to stop P&TS engaging in this endeavor. The LC is merely a sore loser under the free enterprise system.

B(8) The LC lies to claim Landsberger made "no showing" that the $445.00 was connected with the improvement of the management of his family estate assets. Forrester and

Landsberger communicated with hundreds of letters and phone conversations on exactly such improvements, and today Landsberger is the benefactor of those multiple benefits. For example, on his car alone, it is now in a trust, his insurance premiums are cut in half, his legal exposure to court suits is eliminated, his annual registration is reduced, and all car purchases can be made at wholesale and without paying any sales tax. Terrific benefits in just one small area alone. The LC stating "no showing" is preposterous.

B(8) The LC lies to state that Landsberger claimed an "excess of withholding exemptions." First, no exemptions were claimed, or meant to be claimed. All claims were for allow--ances only (and corrected to read allowances.) The number of such allowances was correctly computed (or corrected to the proper number) according to the Federal and State laws. One problem existed in that

state and federal laws give difference values to an allowance, so it was impossible to show a given number of allowances on the 1040 return that would equate to the same dollar figure on the state return. This was expalined by Landsberger, so there is no basis at this point in time for the ridiculous claims of the LC. Since the Appellee tried to change the number of allowances and since such changes were deliberately made by the IRS and the Appellee in order to commit fraud against Landsberger, it is the Appellee and the IRS who are solely guilty of fraud to extort more taxes than the law permits.

B(9) All references, threats, etc. by the LC to "criminal acts, etc," refers only to the fraudulent claims of the Appellee and the LC. Landsberger has committed no violations of any existing laws. It is just abusive behavior by the LC to make such absurd claims.

B(9) The LC displays its ignorance, pre-

judice, and incompetence by claiming that the PSC and Landsberger constitute an evasion (or even an avoidance, which is legal, by the way) of taxes. As the inventor of the system (it is another prejudiced lie of the LC to refer to the PSC as a "scheme.") Forrester has spent over 25 years developing and refining the systems and checking them out with hundreds of knowledgeable persons in legal and accounting and tax professions. Forrester offers a $10,000 reward to anyone who can prove any violation of existing laws. To date, there have been no comers. The LC, not being able to take up Forrester either (having been offered the reward in open court) is reduced to making false claims and slinging mud at the systems plus grinding its teeth. None of Forrester's systems are designed for even tax avoidance; all are designed solely as improved mediums, and that is what they are are. Thousands have benefited with the various systems and hundreds would be out of

work were it not for the efficacy of the systems. All systems are not in violation of any known laws. Thus, for the LC to rule against the systems, the LC is forced to lie about the facts of their operation.

IN CONCLUSION, Landsberger was NOT the legal owner of any earning assets and thus could not have any constructive receipt after signing the PSC in 1979. Without constructive receipt, Landsberger had no further tax liability. With no further tax liability, Landsberger's filed tax returns reflected correct computations. Thus, the Commissioner's claim for more taxes is without merit or support, and the disallowances of the Commissioner can only be overruled and dismissed as invalid and unsupported by existing applicable law.

(Before me appeared Frank Forrester (11/6/82) AND being duly sworn did depose and state that all the foregoing is true and correct under penalty of perjury. Paul Kaplan, Notary Public, State of New York.

THE CONSTITUTION OF THE UNITED STATES

ARTICLE 1 Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Deprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

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MERTEN'S - PRENTICE HALL ON CONSTRUCTIVE RECEIPT. (Chapter 10, Page 31)

s10.07. Receipt by Agent Is Receipt by Principal. The general rule is that receipt of income by an agent is equivalent to receipt by the principal and such income is either actually or constructively received by him.

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MERTEN'S LAW OF FEDERAL INCOME TAXATION Vol. 2 Chap. 10 Page 32. Even though an agent or attorney claims a part of proceeds collected for his principal, the full

amount including any portion retained by the agent will ordinarily be income to the principal. Where, however, an agent receives and misappropriates funds for his own use, there is no constructive receipt by the principal since in such case the agent is not acting on behalf of his principal. But this rule was not applied where the agent did not intercept current revenue as the funds came into his hands.

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PRENTICE HALL (Federal Taxation) Sec. 61

7464 TO WHOM INCOME TAXABLE 7461 Basic Rules

...If a person merely receives physical possession of income that, in fact, belongs to another person, he is not taxed on it. If he receives it as agent, it is taxable to his principal.

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PRENTICE HALL (7541)---If a person receives an amount which in fact belongs to someone else, such an amount is not income to the person who receives it.

PRENTICE HALL (7542). Taxpayer as agent for another.--When a taxpayer receives an amount in the capacity as agent for someone else, the amount is income to that someone who is the principal in the transation. Therefore, such an amount is not includible in taxpayer's income.

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PRENTICE HALL (7544). Amounts earmarked for use other than by taxpayer.---An amount received by a taxpayer that is ear marked for use other than by him, is generally not income to the taxpayer if he disburses it in accordance with the charge.

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PRENTICE HALL Reg. s1.451-2 (20,151)

The doctrine of constructive receipt affects only cash basis taxpayers. Where a taxpayer keeps his books on another basis, rules of accrual usually determing when he shall report income. That an amount is deducted by an employer as salary expense does not mean necessarily that a cash basis em-

ployee constructively receives it. 20.164 (15). Although constructive receipt is defined by the Regualtions, 20.162, it is a doctrine which has been shaped largely by the courts. Originally it could be employed only by the Commissioner. Eventually, however, the courts recognized the theory as a principle of accounting; and now, to the extent that the principle determines the proper year for reporting income, it may be cited by taxpayer or commissioner alike.

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PH CONSTRUCTIVE RECEIPT (s451) 20.173

CONTROL OF INCOME PRODUCING PROPERTY

Ordinarily, where the right to receive income is disputed between two parties (as between principal or alleged agent) someone is taxable on the amount and the only question is who. See 746 et seq. In certain cases, however, ownership of income producing property can be proved by no one. Until ownership is settled, therefore, no one may be charged with receipt of income, constructive or otherwise.

U.S. Master Tax Guide, Page 456 Item 1331.

Foreign Tax Treaties. The United States has negotiated a network of treaties with other countries to avoid international double taxation and to prevent tax evasion. Provisions are included to prevent fraudulent evasion and also to restrict legal avoidance. Principal tax treaties now in force are those with Australia, Austria, Belgium, Canada, Denmark, Finland, France, West Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New-Zealand, Nigeria, Norway, Pakistan, the Soviet Union, Sweden, Switzerland, Trinidad and Tobago, Union of South Afirca and the United Kingdon.

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COMMENT-LUCAS vs EARL. In Lucas vs Earl, the U. S. Supreme Court has set forth a precident rule to the effect that the tax liability for earnings go with the legal owner of the asset. That is, you can't give away the dividends and the tax on the dividends

without giving away the stock; you can't give away interest and its tax liability without giving away the bonds. The Supreme Court said the fruit attaches to the tree from which it grew. In other words, job compensation and tax liability for same goes with the party who contracted for the services. If a labor contractor has purchased the personal services of an individual and if the labor contractor allows that individual to perform work, both the compensation and the tax liability go to and with the labor contractor.

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RIGHT TO SELL PERSONAL SERVICES via A LEGAL CONTRACT---Court Cases

1. In Butchers Union Co. vs Crescent City Co., 111 U.S. 764; 1883, Justice Field repeated Adam Smith's Wealth of Nations:

"The property which every man has is his own labor, as it is the original foundation of all other property, so it is most sacred and inviolable. The patrimony of the poor

man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property."

Justice Field also said, "Among these inalienable rights, as proclaimed in the great document (the Declaration of Independence), is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their highest enjoyment."

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2. In Allgeyer vs. State of Louisiana, 165 U.S. 578; 1897, re the 14th Amendment, Justice Peckham said: "The 'Liberty' mentioned in that amendment means,not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace

the right of the citizen to be free in the enjoyment of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livlihood by any lawful calling; to pursue any livlihood or a vocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying our to a successful conclusion the purposes above mentioned."

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3. In Adair vs U.S., 208 U.S. 161, Justice Harlan stated: "In all such particulars the employer and the employee have equality of right, and legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

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4. In Coppage vs. Kansas, 236 U.S. 1, Justice Pitney expanded: "Included in the right of personal liberty and the right of private property-partaking of the nature of each--is the right to make contracts for the ac-

quisition of property. Chief among such contracts is that of personal employment, by which labor and other service are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established Constitutional sense, the right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

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5. In Adkins vs Childrens Hospital, 261, U. S. 525, Justice Sutherland said: "In principal, there can be no difference between the case of selling labor (property) and the case of selling goods(property)."

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6. In Charles Laughton, 40BTA 101 (1939) and in Fontaine Fox, 37BTA 271 (1938), the Court ruled to this effect: The fact of privacy of contract existed between the corpor-

ations created by Laughton and Fox and themselves and said contract precluded the adverse application of Lucas vs Earl. In other words, where an agent, who is performing the personal services, has a contract with his principal to turn over his earning property to said principal, then the income from that earning property is taxable to the principal, and in these circumstances a third party employer cannot be held responsible for withholding income taxes. See IRS Reg. Sec. 31-3401(d)1; Rev. Rul. 57-145, CB 1957-1, p.332.

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7. IN Edwards vs Commissioner, 415 F2nd 578, 582; 10th Cir. (1969) the Court held that: The dignity of contract cannot be set aside because a tax benefit results either by design or accident.

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8. In Daniel F. Keller vs IRS, the U.S. Tax Court, via Justice Arthur L. Nims, the Third ruled that: It is legal to establish a one-man corporation for the purpose of receiving

tax and benefit breaks. The Court said that the claim of the IRS that income should be taxed to Keller "would, in effect, disregard the existence of the corporation... and would be arbitrary and capricious."

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9. In 27 F 2nd 149, Judge Gresham said that: U. S. Citizens have the right to own and transfer real and personal property.

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10. In Ditmars et al vs Commissioner, 302 F 2nd 481, 2nd Cir. (1962), the Court determined that: Individuals can set up corporations, professional Corporations, and trusts and contract to sell their services exclusively through such legal entities.

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Final Note: Professor of Contract Law at Northwestern University, Chicago, Ill. stated that,"A contract is valid when there is a meeting of the minds of both parties to the contract."

82-1520

IN THE

Supreme Court of the United States

October Term, 1982

GERALD J. LANDSBERGER,

Petitioner,

vs.

COMMISSIONER OF REVENUE,
STATE OF MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether under Minnesota law the personal income earned during 1979 by Petitioner as an employee of Burlington Northern Railroad is subject to Minnesota's state income tax, notwithstanding Petitioner's claim that he had contractually assigned his personal services, and the income derived therefrom, to a third party called Professional & Technical Services.

2. Whether under Minnesota law Petitioner is entitled to an itemized deduction on his Minnesota state income tax return for "Advisors fees", which were in fact connected with his tax avoidance scheme.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Commissioner of Revenue for the State of Minnesota, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Minnesota Supreme Court's decision in this case. That decision is an unreported Order of the Minnesota Supreme Court dated November 10, 1982, affirming the decision of the Minnesota Tax Court in favor of Respondent Commissioner. It can be found in the Appendix at B(1).

JURISDICTION

Petitioner is attempting to invoke the jurisdiction of this Court under 28 U.S.C. § 1257 (Pet. for Writ, p. 4),[1] but has failed to specify the exact paragraph of that statute which he relies upon. We assume it is paragraph (3), since this is a petition for writ of certiorari. If so, then it is clear that no jurisdiction lies for any of the Questions Presented by Petitioner. (Pet. for Writ, p. 1). Not one of Petitioner's four Questions Presented sets forth an issue:

> "[W]here the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

28 U.S.C. § 1257(3).

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[1] Throughout this brief the abbreviation "Pet. for Writ" stands for the Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota herein. The abbreviation "A. —" is a reference to the Appendix filed with the Petition. The abbreviation "Finding No. —" is a reference to the Minnesota Tax Court's Findings of Fact which are printed in the Appendix (A. 2 - A. 6).

STATEMENT OF THE CASE

This is a Minnesota state income tax case which presents a question of purely state law, to wit: whether an individual taxpayer can totally avoid Minnesota income tax through the simple device of entering into a "personal services contract" which allegedly assigns all his personal services, and the income derived therefrom, to a foreign "trust". The tax year involved is 1979.

The taxpayer and Petitioner herein, Gerald Landsberger, was employed as an accountant with the Burlington Northern Railroad throughout the year 1979, earning a total of $25,027.72 in compensation for that year. Finding No. 2. (A. 2). On May 27, 1979, Petitioner signed a "personal services contract" with a trust called Professional and Technical Services ("P&TS"), which contract indicated that it was an assignment of Petitioner's personal services to the trust. Finding No. 3. (A. 2—A. 3). However, Burlington Northern had no knowledge of this "personal services contract", Finding No. 4 (A. 3), and the trial court expressly found that Petitioner remained an employee of Burlington Northern throughout 1979. Findings No. 2, 4 and 13. (A. 2; A. 3; and A. 5).

After signing his contract, Petitioner began endorsing his Burlington Northern paychecks over to an organization called IDI (supposedly on orders from P&TS), but almost immediately received back 95% of the amount of each paycheck from an affiliated entity called IDI Credit Union, which receipt Petitioner characterized as a gift from a charity. Findings No. 5 and 6. (A. 3—A. 4). The trial court below noted in its memorandum that there was no real distinction between P&TS, IDI and IDI Credit Union, but in fact all these "organizations" were merely parts of one tax evasion scheme. (A. 12).

On his 1979 state income tax return Petitioner subtracted from his taxable gross income the amounts of his paychecks he had signed over to IDI. Finding No. 7. (A. 4). He also took an unsubstantiated deduction of $445.00 for what he called "advisors fees for advice on investing assets/property". Findings No. 8 and 15. (A. 4; A. 5). These actions resulted in a claimed tax liability of zero. Finding No. 9. (A. 4).

Upon audit of this return, the Minnesota Commissioner of Revenue disallowed the Petitioner's subtractions and deductions, and then calculated the correct tax due resulting in a Commissioner's Order dated May 22, 1981, assessing an income tax liability of $918.00, including interest to the date of the Order. Findings No. 11 and 12. (A. 5). Petitioner appealed from this Order to the Minnesota Tax Court and trial was held on February 16, 1982, Judge Carl A. Jensen presiding. On June 11, 1982, the Minnesota Tax Court issued its decision affirming the Order of the Commissioner in all respects. (A. 6). Petitioner took a further appeal by certiorari to the Minnesota Supreme Court. On November 10, 1982, the Minnesota Supreme Court issued its Order affirming the decision of the Minnesota Tax Court. (A. at B(1)).

It is worth noting that in the first sentence of its memorandum opinion the Minnesota Tax Court stated: "This is about as raw an attempt to evade and avoid taxes as has come to the attention of this Court". (A. 6). Moreover, Petitioner Landsberger is not only a participant in this scheme, but is also one of the scheme's promoters. Finding No. 6. (A. 3—A. 4). In fact, the Internal Revenue Service recently sought and obtained a permanent injunction against the continued marketing and operation of this scheme by the Petitioner, due to the scheme's patent illegality. *See United States v. Landsberger*, —— F.2d ——, 50 AFTR2d 82-5445 (8th Cir., 1982); affirming 534 F.Supp. 142 (D. Minn., 1981).

REASONS FOR DENYING THE WRIT

I. THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED IN THIS CASE.

It is axiomatic that before this Court can obtain jurisdiction under any part of 28 U.S.C. § 1257, there has to have been a substantial federal question raised, litigated and decided in the state court proceedings. *See Zucht v. King*, 260 U.S. 174 (1922). *See also Palmer Oil Corp. v. Amerada Corp.*, 343 U.S. 390 (1952).

In the present case, the issues raised are neither substantial nor federal in character. No matter which view one takes of the Questions Presented,[2] the fact remains that this lawsuit was manifestly correctly decided by the Minnesota Supreme Court on purely a question of state law. It thus does not warrant review by this Court on certiorari.

None of the Petitioner's Questions Presented (Pet. for Writ, p. 1), are framed in terms of a federal statutory or constitutional issue. In fact, on the cover of his petition Landsberger clearly states that he is basing his petition:

> "[U]pon the grounds that said [Minnesota Supreme Court] decision is not in conformity with the tax laws of the State of Minnesota and is unwarranted by the evidence."

Obviously, the Minnesota Supreme Court has the sole power to determine what is in conformity with the tax laws of Minnesota. And if Petitioner is serious in his assertion that the decision below should be reviewed because it is unwarranted by the evidence, then the writ should be denied because it has long

[2] Both the Petitioner and Respondent have submitted different versions of the real Questions Presented in this case.

been established that this Court will not review the decision of a state court upon a question of fact that is supported by substantial evidence. *General Motors Corp. v. Washington*, 377 U.S. 436, 441-442 (1964); *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160 (1952); *Grayson v. Harris*, 267 U.S. 352, 357-358 (1925); *Pure Oil Co. v. Minnesota*, 248 U.S. 158, 164 (1918). The Minnesota Tax Court's detailed Findings of Fact (A. 2—A. 6) were clearly supported by the record, and the Minnesota Supreme Court did not disturb those findings on review.

In addition to the above, Petitioner has made no assertion that his case (involving only his own personal Minnesota income tax liability for the year 1979) is in any way of general importance beyond the particular facts of his situation. He has failed to cite any actual or potential conflicts of decision between the Minnesota Supreme Court and other courts in the land. Nor is there any conflict among United States Circuit Courts of Appeal on this question. Accordingly, it is quite clear that Petitioner's Questions Presented are not substantial enough for this Court's attention.

Nor is there any real federal question involved. There was certainly no specific federal constitutional claim made by Petitioner in either the Minnesota Tax Court or the Minnesota Supreme Court below, as attested to by the fact that neither state court addressed any such constitutional questions in their decisions. As this Court has stated many times, the failure of the highest state court to pass upon a federal question raises the presumption that no such federal question was properly presented in the state courts. *Fuller v. Oregon*, 417 U.S. 40, 50, n. 11 (1974); *Street v. New York*, 394 U.S. 576, 582 (1969).

Petitioner's sole reference to any part of the federal constitution is on pp. 4 and 11 of his Pet. for Writ, where he claims

that the actions of the courts below somehow result in an impairment of his personal services contract. But, of course, no such thing ever occurred. In fact, the Minnesota Tax Court expressly stated that it did not have to concern itself with the validity and enforceability of the contract as between Landsberger and P&TS. (A. 7). The courts below simply ruled, under settled tax principles first established by this Court in *Lucas v. Earl*, 281 U.S. 111 (1930),[3] that Petitioner's contract, whether valid or not, did not absolve him from income tax liability on his compensation earned as an employee of Burlington Northern. As this Court said in *Lucas v. Earl*:

> The validity of the contract is not questioned, and we assume it to be unquestionable under the law of the State of California, in which the parties lived. *Nevertheless we are of opinion that the Commissioner and Board of Tax Appeals were right.* (Emphasis added.)

281 U.S. at 114.

Thus, there simply does not exist an impairment of contract clause question in this case. *See also Barwise v. Sheppard*, 299 U.S. 33, 40 (1936) [all contracts are made in subordination to the state's power of taxation].

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[3] Which principles were adopted for Minnesota income tax purposes in *Drew v. Commissioner of Taxation*, 222 Minn. 186, 23 N.W.2d 565 (1946).

II. THE ISSUE IN THIS CASE IS PURELY A QUESTION OF STATE LAW.

The only real questions in this case are whether, under Minnesota's state income tax law, the Petitioner and his income were subject to Minnesota income tax, and whether Petitioner is entitled to a certain itemized deduction under Minn. Stat. § 290.09, subd. 2(b)(2).

Both of these questions were purely state law issues. Although some reference was made in the trial court's decision to federal cases, it is clear that this was solely due to the similarity between Minnesota's income tax law and the federal income tax law. A simple reading of the trial court's decision (A. 1—A. 22) is sufficient to establish that there were ample state law grounds upon which to base the decisions below.

We need not elaborate on what the Minnesota Tax Court has already said and the state Supreme Court has affirmed. It is clear that this suit is purely and simply a question of state income tax law, upon which the Minnesota Supreme Court has the last word. No federal question of a substantial nature has been presented or decided. Indeed, Petitioner's entire case is so insubstantial and devoid of merit as to be frivolous. Accordingly, this Court should deny review.

CONCLUSION

For these reasons, this petition for writ of certiorari should be denied.

Respectfully submitted,

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NO. 82-1520

IN THE SUPREME COURT OF THE UNITED STATES

GERALD J. LANDSBERGER	REPLY TO
PETITIONER	RESPONDENT'S
vs.	BRIEF IN
COMMISSIONER OF REVENUE,	OPPOSITION TO
STATE OF MINNESOTA	PETITION FOR
RESPONDENT	WRIT OF
	CERTIORARI

PETITIONERS REPLY BRIEF

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STATEMENT IN REPLY

1. I am not talking about the personal income of Landsberger; I am talking about the income of Professional & Technical Services to whom the earning assets were previously sold.
2. I am not talking about my being an employee of BN; I am talking about my being an independent contractor on loan to BN as a leased employee under the valid Personal Services Contract.
3. I am not talking about contractually assigning personal services; I am talking about contractually SELLING personal services (assigning means to give away).
4. I am not talking about contracting out my income; I am talking only about contracting out personal work services property assets with no mention of income whatsoever.
5. I am not talking about any fees for a "tax avoidance scheme;" I am only talking about fees for financial management

consulting fees. Further, no "scheme" is involved. Further, it is immaterial if any tax avoidance should transpire since tax avoidance by definition is totally legal.

6. I'm not up on the jurisdictional question but I believe that controversies between a citizen and a state agency does come under the purview of the US Supreme Court. As I am now a citizen of Arizona, I wish to claim diversity of domicile. Since the State of Minnesota follows the IRS Code fairly well, I believe that State tax laws coinciding with Federal tax laws permits coming in under Federal laws especially since the state and Federal tax agencies have conspired and cooperated against me. There are no federal or state laws covering non-constructive receipt by agents of job shop principals in the loaning out of leased employees, and where no laws exist, the State of Minnesota has no juridsiction

over me and the imposition of unsupported claims by the State of Minnesota permits me to file an appeal to the highest court for relief for I have exhausted my lower court remedies.

7. I am not talking about purely state law; I am talking about the facts of the status of a leased employee, which status is not covered by any Minn. State law.
8. I am not talking about a taxpayer avoiding Minn. income taxes by using the PSC; I am talking about the legal right to sell assets to a third party and thereby transfer tax liability to the new 3rd party, an act which the State of Minn. laws cannot prevent or nullify. The sanctity of contracts is inviolate by the State of Minnesota.
9. I am not talking about assigning, i.e., giving any personal services or any income to a "foreign trust"; I am talking about a sale of assets to a 3rd party American trust having no connection to

me nor anyone connected to me.

10. I am <u>not</u> talking about "Finding No. 2" of the Respondent; I <u>am</u> talking about the <u>TRUE</u> facts with which the unsupported Respondent's claims are at odds.

11. I am <u>not</u> talking about BN's knowledge of the PSC since BN was not a party to PSC.

12. I am <u>not</u> talking about the unsupported conclusion of the tax court that I was an employee of BN; I <u>am</u> talking about the change in my status as a legal result of having signed the PSC converting me into an agent-leased employee working henceforth for P&TS on loan to BN without any disclosure of the P&TS relationship being required under law.

13. I am not talking about my endorsing over my paychecks to IDI; I <u>am</u> talking about me, as agent, endorsing over to the assigns of P&TS the payments due P&TS. All payments were legally owned and due to P&TS so the

endorsing was merely a physical step to complete that obligation by the agent-messenger, Landsberger to his principal, P&TS. P&TS has the sole tax liability.

14. I am not talking about receiving back any amount from IDI or from P&TS; I am talking about unrelated legal gifts from another party outside the jurisdiction of the Respondent, and being unrelated legally said gifts are immaterial and irrelevant to the case at hand.

15. It is false that the IDI Credit Union is "affiliated" with Landsberger or with P&TS or with International Dynamics, Inc. There is no legal connection between those parties.

16. All gifts from charities were confirmed in writing.

17. It is false that the tax court made any supported finding that there was "no real distinction" between the listed parties; there was no and is no factual evidence in the record to support

the false claims of the tax court. As stated in 15 above, there isn't and there never was any connection between Landsberger and P&TS except as agent-messenger. P&TS is unrelated to IDI, and IDI is unrelated to the IDI Credit Union or any of the half dozen other Charities. Further, IDI, IDI Credit Union, and all the other charities are outside the jurisdiction of the Respondent. Also, the Respondent has no subject matter jurisdiction over P&TS. P&TS is not a Minnesota taxpayer.

18. I am <u>not</u> talking about one tax evasion scheme; I am <u>not</u> talking about a scheme; I am <u>not</u> talking about tax evasion; I am <u>not</u> even talking about tax avoidance; I only have a new method of investing in the sole source of all the profits in the world, accounts receivable.

19. It is false that Landsberger subtracted from his gross income; Landsberger did not have any constructively received

gross income of the kind indicated by the Respondent; Respondent has combined Landsberger's constructively received income with his non-constructively received monies which were legally turned over to the true owner, P&TS.

20. It is unsupported and incorrect what the Minn. Commissioner of Revenue "calculated" as all such calculations were based on unsupported and false assumptions of combining constructive and non-constructive monies into a single figure.

21. All of the claims of the Respondent were rebutted, refuted, and denied by Landsberger in the tax court, but the tax court paid no attention whatsoever to the facts and instead relied only on the unsupported claims of the Respondent's attorney.

22. The extreme prejudice and lack of judicial demeanor and conduct is well indicated by the statement quoted by the Respondent's attorney. Actually, there

was no intent and no attempt to evade a any taxes. The avoidance of taxes, is of course, 100% legal even if tax avoidance was a minor incidental matter to the primary goal of investing in a better medium, accounts receivable. It is this extreme raw prejudice that I am objecting too which requires relief in this Court.

23. I object to the use of the word "scheme" repeated by the Respondent for prejudicial reasons and make a motion to this Court to strike same where it appears.

24. I am not the promoter of the PSC; the system was invented by Frank Forrester and marketed by American Dynamics Inc.

25. It is false that the IRS has obtained a permanent injunction against "this scheme". The injunction is currently pending in the Minnesota District Court where some 17 motions have been lodged to dismiss it, and one of the motions is for a new trail based on 135 false state-

ments used by the lower court to manufacture a false case against me. Further, the injunction only relates to the "Foreign Tax Haven Double Trust" which does not exist, was never leased, and has no connection with the Personal Services Contract in question and at issue here, so that the injunction only applies to a trust which never existed in the first place making the injunction moot.

26. The jurisdiction of the U.S. Supreme Ct. is good because the Respondent is attempting to deprive me of my property and legal rights by issuing false, unsupported and fraudulent charges and claims against me in violation of the 5th Amendment to the U.S. Constitution. The falseness of the charges, the lack of supporting facts in evidence, the lack of supporting laws governing leased employees, the extreme prejudice shown and quoted, the attempt by the Respondent to violate the "Contract Clause" of

the U.S. Constitution, Art. 1, Sec. 10, para. 1, the attempt by the REspondent to block free speech under the 1st Amendment, the attempt by the REspondent to block interstate commerce and trade protected by the Sherman and Clayton Anti-Trust laws of Congress in Title 15 U.S. Code, diversity of dimicile, lack of jurisdiction by the Respondent over IDI, IDI Credit Union, American Dynamics Corp., Frank E. Forrester and the lack of P&TS as a taxpayer all combine to allow this Court to hear this case.

27. This case was only decided in the Respondent's courts on laws which applied to facts not in evidence here. All facts used by the Respondent were made up facts or immaterial facts, and all of the TRUE facts were ignored. This kind of case cries to be heard on its true merits in an unprejudiced court. The Respondent's position has not any substantial evidence in support.

28. It is false that my case is not universally important case law; according to Frank Forrester, there are over 100 cases pending on the same or similar subject matter facts in other federal, state, and tax courts currently. A proper review of the true facts here would save all of these courts and the parties involved thousands of hours of dispute.

29. It is false that constitutional claims were not presented in the lower courts on the issue of the sanctity of contracts, the right to sell assets, and the automatic transfer of legal ownership and legal tax liability upon the making of such transfers by selling personal services property assets. Any presumption that the Responent's courts gave any consideration to constitutional questions is false because the REspondent's courts deliberately sought to evade such issues.

30. As the Respondent states/admits, the PSC

is valid and thus the sale of assets is also valid and the change of tax liability is also valid.

31. Respondent has deliberately tried to twist the doctrine established in Lucas vs. Earl in which Earl GAVE AWAY HIS INCOME without paying the income or gift tax; whereas in the present case, I did not have any legal right or dominion over nor did I own any income to give, exchange or sell. I could not give away what wasn't mine once I had sold the underlying assets, i.e., the "tree." As the U.S. Supreme Court so aptly stated, whoever owns the tree, owns the fruit from that tree. One cannot separate the legal ownership of the fruit from the tree on which it grew. I agree. Since P&TS is the sole legal owner of the tree, it also is the sole legal owner of all of the fruit, the income payments due from the personal services rendered by the leased employee, Lands-

berger. I never owned and never gave anything away to anyone. There is no contrary evidence in the PSC or in any other document or testimony or evidence. My case is just the opposite of the facts in Lucas vs Earl which is why the adverse decision in the Lucas vs Earl case is FAVORABLE TO ME.

32. The Respondent is definitely seeking to impair the PSC and nullify it and its legal obligations. Respondent must look to P&TS for tax liability of any income received by P&TS.

33. Since the Respondent never had any support for its manufactured charges in the first place, the insistence of the Respondent to continue to pillory me is unjust, dishonest, dishonorable, malicious and against the public interest. As such this Court has a moral duty and right to review this case from the facts as well as the law.

Respectfully submitted: Gerald Landsberger